Annual Survey of Massachusetts Law

Volume 1957 Article 19

1-1-1957

Chapter 15: Equity and Equity Practice

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CHAPTER 15

Equity and Equity Practice

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§15.1. Specific performance. Specific performance of contracts for the sale and purchase of realty was considered again by the Supreme Judicial Court during the 1957 SURVEY year. It would seem that this subject has been studied and decided in all its facets; yet each year problems arise. *LeBlanc v. Molloy*[1] re-emphasized the proposition that while the granting of specific performance may be a discretionary power,[2] it is traditionally granted in the absence of special circumstances. No question was raised as to the fairness of the bargain or of the relative position of the parties. The attempt on the part of the defendants to escape from their bargain by raising technical defenses was promptly perceived and peremptorily denied.

In *Gardiner v. Richards*[3] a proceeding was instituted for a declaratory decree determining the rights and obligations of the parties arising under a written purchase and sale agreement involving land. This action in reality adjudicated the plaintiffs' right to specific performance, if desired by them. The agreement in this case differed from the usual land purchase contract, since the election to take less than "all or nothing" was in the buyer rather than in the seller. Prior to the bringing of this proceeding a law action seeking damages for breach of this agreement had been instituted, and was still pending.[4] The problem of maintaining both actions at the same time was not discussed in the opinion. Clearly a party should not be required to defend both a law action and a bill in equity seeking specific performance, when both arise from the same contract. Such actions are inconsistent and diametrically opposed. In the law action a court would have been required to interpret the contract and to define the rights and obligations of each party; these same requirements also apply when the Court here acted on the petition for a declaratory judgment.

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§15.1. [1] 335 Mass. 636, 141 N.E.2d 519 (1957).

[2] McCormick v. The Proprietors of the Cemetery of Mount Auburn, 285 Mass. 548, 189 N.E. 585 (1934).

[3] 335 Mass. 455, 142 N.E.2d 889 (1957). For further comment on this case, see §11.5 *supra*.

[4] 335 Mass. at 457, 142 N.E.2d at 890.

§15.2. Unfair competition. In *Ferrone v. Mucci*[1] the Court was asked to enjoin competition that violated a restrictive covenant that was part of a contract for the sale of a business. Covenants restricting competition are found most often in contracts between employers and employees,[2] and are held valid and enforceable in equity provided they are necessary for the protection of the employer, are not injurious to the public interest, and are reasonably limited in time and space.[3] When such a restrictive agreement is coupled with the sale of a business, however, there is present an additional property right, good will. It would seem that in the enforcement of this trade or competitive restriction, the courts would tend to favor the buyer more than the employer in the employment contracts; the courts have, however, applied the same standards in both instances. In the *Ferrone* case, the rule of reasonableness of the area was applied. The case was referred to a master whose report "recommended that the negative covenant ... be modified to a radius of one mile and that the bill of the plaintiff be dismissed."[4] The master's report was confirmed but the final decree entered modified the covenant to a two mile radius. This decree was reversed by the Supreme Judicial Court because there was no basis for a conclusion by the trial court different from that reached by the master.

In *New England Telephone & Telegraph Co. v. National Merchandising Corp.*[5] the Court was asked to restrict competition and trade on the grounds that a property right was being infringed and invaded and that action on the part of the defendant constituted unfair competition and trespass. The defendant's action of which the plaintiff complained was the distribution of plastic covers designed to fit closely over telephone directories of varying sizes. These covers contained, in addition to other information, paid listings of ten or twelve local business concerns classified by occupation or business. The telephone company furnished its subscribers, without special charge, classified advertising of business subscribers. Its revenue from the classified advertising is quite substantial. The problem which the Court was called upon to resolve was the ever present conflict between public and private interests. The Court adhered to the philosophy that the public interest is paramount in these matters and that this interest is best served by a freely competitive economic system from

§15.2. [1] 335 Mass. 87, 138 N.E.2d 601 (1956). See Annotations, 45 A.L.R.2d 77 (1956), 46 id. 119 (1956).

[2] Woolley's Laundry, Inc. v. Silva, 304 Mass. 383, 23 N.E.2d 899 (1939); Walker Coal and Ice Co. v. Westerman, 263 Mass. 235, 160 N.E. 801 (1928); Sherman v. Pfefferkorn, 241 Mass. 468, 135 N.E. 568 (1922).

[3] Economy Grocery Stores Corp. v. McMenamy, 290 Mass. 549, 195 N.E. 747 (1935).

[4] 335 Mass. 87, 138 N.E.2d 601, 602.

[5] 335 Mass. 658, 141 N.E.2d 702 (1957). See further comment on this case in §26.1 *infra*.

which as many monopolistic restrictions as possible have been removed.[6]

Many persons have argued that the general public is best served, both as to quality and price, by a competitive system. However, this doctrine is not without limits. In the field of public utilities, monopoly under government supervision is most desirable. Even in other fields of business "cut throat" competition can and does harm the general public. Private interests must be protected in the creation of good will and reputation by virtue of the quality of their service, as well as by their advertising. The public in many instances, in our present-day advertising-conscious economy, rely upon a name, a mark, or a symbol. A court is then called upon to weigh the various interests and to arrive at a proper balance. The interest of free competition has yielded many times to the monopolistic restrictions required to prevent "palming off" of goods and services and needed to establish and enforce a code of business ethics in order to deter the "free ride" and the "dirty trick."[7] The Court in the present case properly points out that there is no pirating, no deceit of the public, and no appropriation of a trade name, a business reputation, a work product, or the distribution system of a competitor.

The Court acknowledged that the scope of equitable relief against unfair competition may have been enlarged somewhat by statute in this Commonwealth.[8] This statute has been considered in the federal courts but apparently has not been considered at length in the state courts. The federal courts have ruled that there is a right to injunctive relief under this statute if there is a likelihood of injury to business reputation, or the likelihood of dilution of distinctive quality of a trade name or trademark.[9] The action of the defendant in the present case did not fit into either of these categories of liability.

§15.3. Discovery under equity jurisdiction. The history, the development, and the subsequent curtailment of bills for discovery was the subject matter of the case of *MacPherson v. Boston Edison Co.*[1] This case and the problems of discovery are discussed in detail elsewhere in this volume.[2]

§15.4. Suits between husband and wife. The principle that there is jurisdiction in equity of suits between husband and wife to secure his or her separate property was confirmed in two cases decided by the

6 335 Mass. at 673, 141 N.E.2d at 711. See Zlinkoff, Monopoly Versus Competition, 53 Yale L.J. 514 (1944).

7 See Chafee, Unfair Competition, 53 Harv. L. Rev. 1289 (1940).

8 G.L., c. 110, §7A, inserted by Acts of 1947, c. 307.

9 Libby, McNeill & Libby v. Libby, 103 F. Supp. 968, 970 (D. Mass. 1952); Sterling Brewing, Inc. v. Cold Spring Brewing Corp., 100 F. Supp. 412, 416 (D. Mass. 1951); Food Fair Stores, Inc. v. Food Fair, Inc., 83 F. Supp. 445, 450 (D. Mass. 1948).

§15.3. 1 1957 Mass. Adv. Sh. 715, 142 N.E.2d 758.

2 See §32.1 *infra*.

Court during the 1957 SURVEY year. In the *Ramsey* case [1] the husband obtained a decree which, among other things, enjoined the wife from occupying real estate of which the husband was the sole owner. The wife contended that a decree of the Probate Court adjudicating that she was living apart from her husband for justifiable cause, and which made no provision for support, ousted jurisdiction of the Superior Court over the subject matter. This contention was dismissed on the ground that jurisdiction of the Superior Court over controversies between husband and wife concerning ownership of property is independent of the powers of the Probate or the Superior Courts in divorce proceedings and matters incidental thereto. Prior to 1936 a petition to determine the wife's property rights could not be engrafted upon a divorce proceeding.[2] An amendment in 1936 [3] conferred general equity jurisdiction in divorce and separate support proceedings of causes in equity between husband and wife. In the *Ramsey* case, however, no action concerning the wife's property rights had been brought before the Probate Court. The question as to whether the Probate Court had the power to order the husband (as a part of the provision for support of his wife) to permit her to occupy the real estate, and whether such decree would have ousted the jurisdiction of the equity court, was not in issue because the official decree of the Probate Court was silent in this respect.

Frank v. Frank [4] was another controversy between spouses to determine their respective rights in property. The basis for the action was that a resulting trust had arisen because, although title had been taken in the name of the wife, the husband had furnished all of the consideration, and that the presumption of a gift between husband and wife was rebutted. The case demonstrates that a resulting trust must arise, if at all, at the time of the transfer to the trustee, and that there must be present at that time an intent to take a specific or distinct interest, an aliquot part, in the property.[5] As the beneficiary in the *Frank* case proved merely an intent to take an undetermined interest, his claim failed.[6]

§15.5. Breadth of equitable relief. In the early days of the common law, the only remedy given, with few exceptions, was money damages. Equity came into being, as a result of the limitations of the harsh and arbitrary common law remedy, to cure this deficiency by granting in each case a remedy that would be the most just. This principle is brought into clear focus in *Douillette v. Parmenter*.[1] The plain-

§15.4. [1] Ramsey v. Ramsey, 335 Mass. 379, 141 N.E.2d 284 (1957).
[2] Adams v. Holt, 214 Mass. 77, 100 N.E. 1088 (1913).
[3] G.L., c. 208, §33, as amended by Acts of 1936, c. 221, §1.
[4] 335 Mass. 130, 138 N.E.2d 586 (1956).
[5] Druker v. Druker, 308 Mass. 229, 230, 31 N.E.2d 524, 525 (1941).
[6] Tenczar v. Tenczar, 332 Mass. 105, 106, 123 N.E.2d 359, 360 (1954), discussed in 1955 Ann. Surv. Mass. Law §2.8.

§15.5. [1] 335 Mass. 305, 139 N.E.2d 526 (1957). For further comment on this case see §14.1 *supra*.

tiff, who was related to the defendant, was induced to build a house on land owned by the defendant, on a spot selected by the defendant, upon the plaintiff's expectation that the defendant would deed to him the land upon which the house was being built. The defendant failed to fulfill this expectation. The plaintiff thereupon sued upon an account annexed for the labor and materials furnished. Since the plaintiff could not prove an express or implied promise on the part of the defendant to pay for them, the Court held he could not recover. The Court, however, stated that the defendant was unjustly enriched at the plaintiff's expense, her conduct was tantamount to fraud, and so the conscience of the state required that the plaintiff be afforded a remedy. Since the law side of the court has failed, the equity side will step in and do justice between the parties by permitting a suit for restitution.

The elasticity of equitable jurisprudence was again demonstrated in the case of *Belefeuille v. Medeiros*.[2] Rescission of a sale of a business was sought because of fraud. Ordinarily one seeking rescission of a transaction must restore or offer to restore all that he has received. This rule is quite just and is applied strictly at law. Inability to restore what was received is an absolute defense in a law action for rescission; in equity, however, the rule is more liberal and rescission may be had, even though complete restoration is impossible, provided that conditions are imposed that will protect the rights of the defendant. The Court warned, however, that even in equity the requirement for restoration is the rule, and rescission without it is the exception.[3] This decision again proves that equity has the capacity to do what is fair and just; that it is the conscience of the state.

[2] 335 Mass. 262, 139 N.E.2d 413 (1957).
[3] Ginn v. Almy, 212 Mass. 486, 493, 99 N.E. 276, 279 (1912).